

European Patent System

—

The business perspective



EUROCHAMBRES

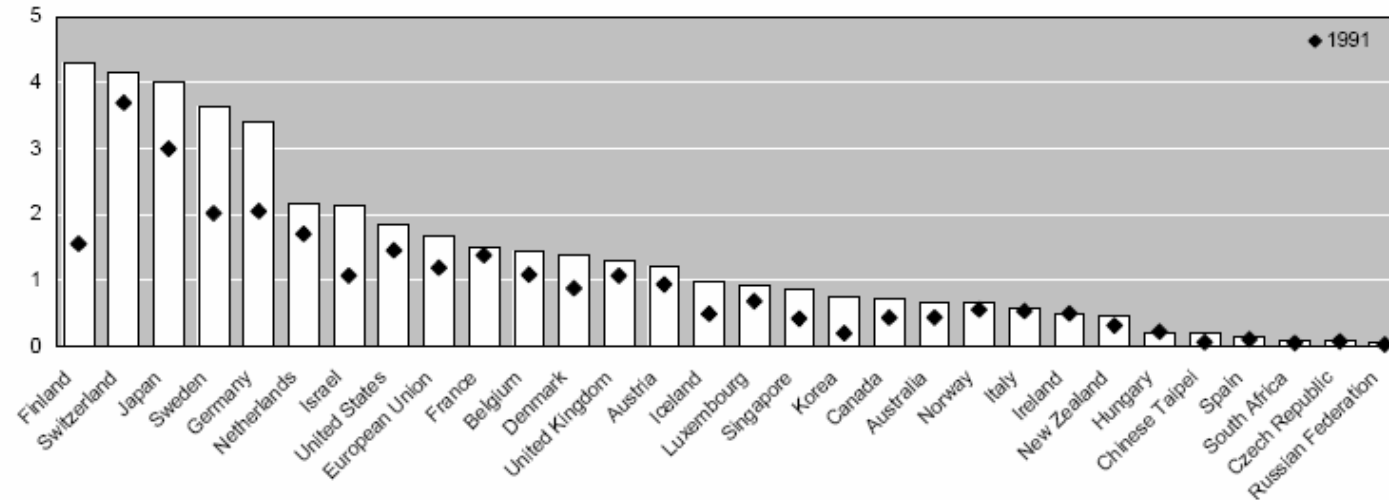
**44 National Chamber Organisations
2000 regional and local Chambers
over 18 million member enterprises in Europe**



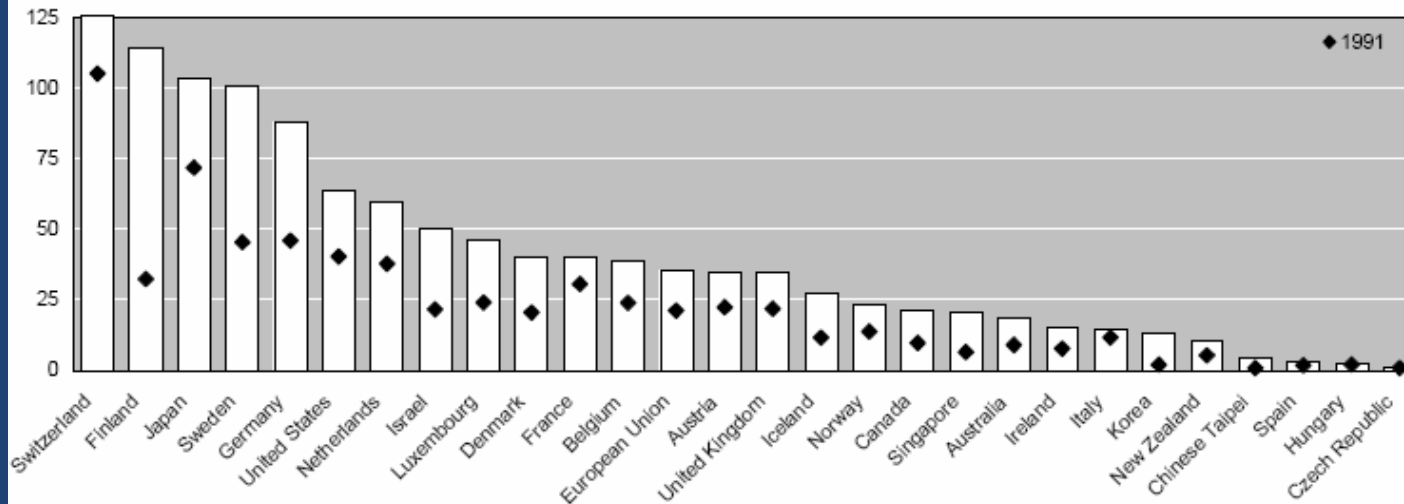
EC Hearing 2006

7. Triadic patent families¹: Patent intensity

Triadic patent families over GDP², 2002



Triadic patent families per million population, 2002



Note: Patent counts are based on the inventor's country of residence, the earliest priority date and fractional counts.

¹ Patents all applied for at the EPO, USPTO and JPO. Figures for 2002 are estimates.

² Gross Domestic Product (GDP), billion 2000 USD using purchasing power parities. European Union figure refers to EU 15.

Source: OECD, Patent Database, December 2005.

Making the patent system... more European

A truly European, integrated and efficient patent system – high quality, cost effectiveness, legal security, readability, accessibility

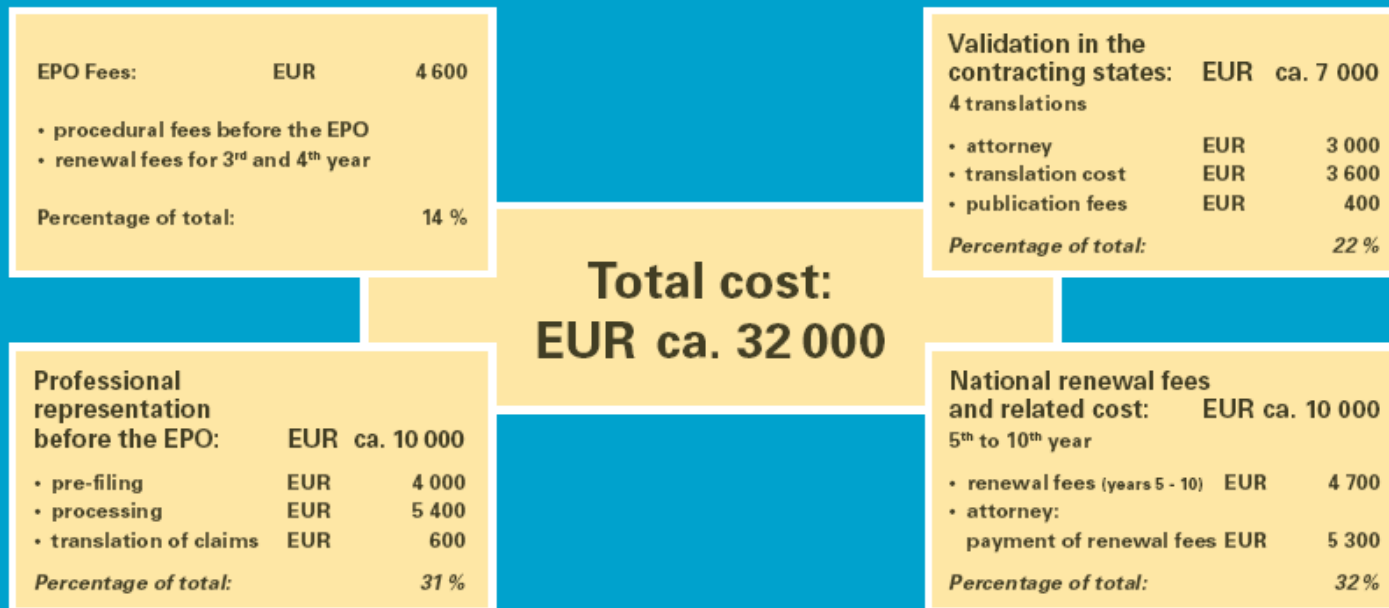
- A European patent: The Community Patent (EC).
- Reducing cost => Easing translation requirements (London Protocol).
- Strengthening legal security: A centralised litigation system (European Patent Litigation Agreement).

Is patent a cost effective means of protecting intellectual property?

Cost effectivity



Cost of a sample European Patent¹



¹ 18 pages, 6 states, 10-year term, excl. in-house preparation costs for the patentee, all values rounded.

Cost effectivity



Cost of a sample Euro-PCT Patent¹

EPO Fees: EUR 6 600

- international fees
- procedural fees before the EPO
- renewal fees for 3rd and 4th year

Percentage of total: 14 %

Validation in the contracting states: EUR ca. 12 500
6 translations

- attorney EUR 4 200
- translation cost EUR 7 500
- publication fees EUR 800

Percentage of total: 27 %

**Total cost:
EUR 47 000**

Professional representation before the EPO: EUR ca. 12 500

- pre-filing EUR 5 400
- processing EUR 6 200
- translation of claims EUR 900

Percentage of total: 27 %

National renewal fees and related cost: EUR ca. 15 500
5th to 10th year

- renewal fees EUR 8 500
- attorney: payment of renewal fees EUR 7 000

Percentage of total: 32 %

¹ 26 pages, 8 states, 10-year term, excl. in-house preparation costs for the patentee, all values rounded.

Cost effectivity

- Internal cost for the company (own « patent » staff)
- Translation of the entire application is mandatory in the language of the country where the protection is required
 - From +/- 2500 € to +/- 5000 € per language
- Maintenance costs/renewal fees
- Attorney costs

Would patent be no more than a licence to litigate?

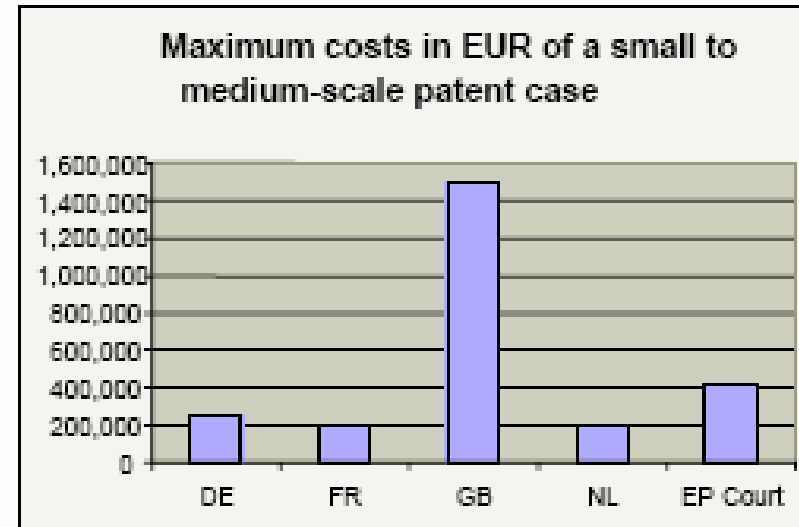
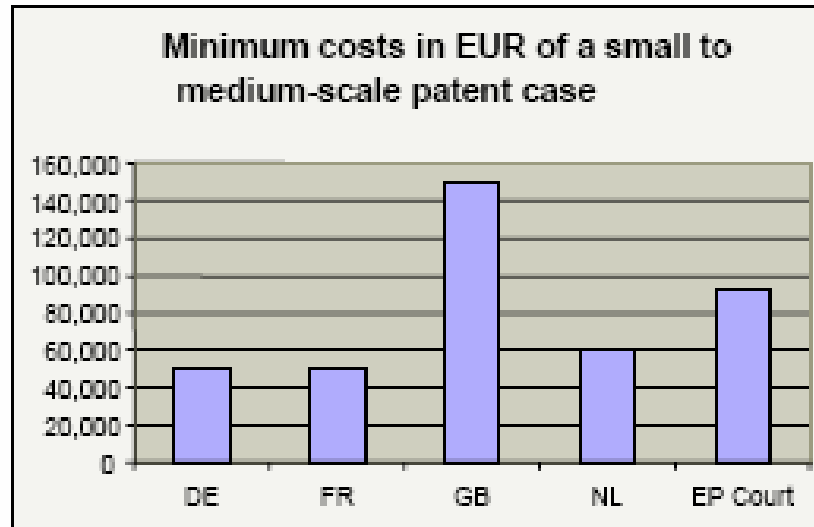
« A licence to litigate »?

- 2/3 firms experimented attempts to copy
- Financial impact is
 - 46% unimportant or bearable
 - 21% very serious

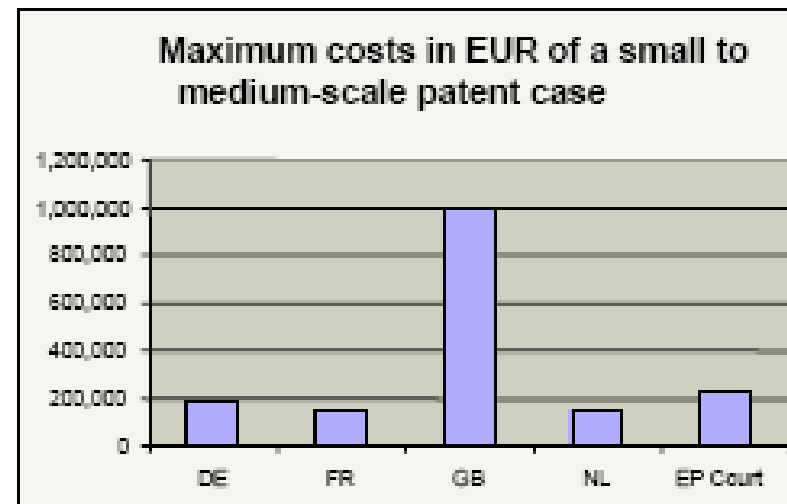
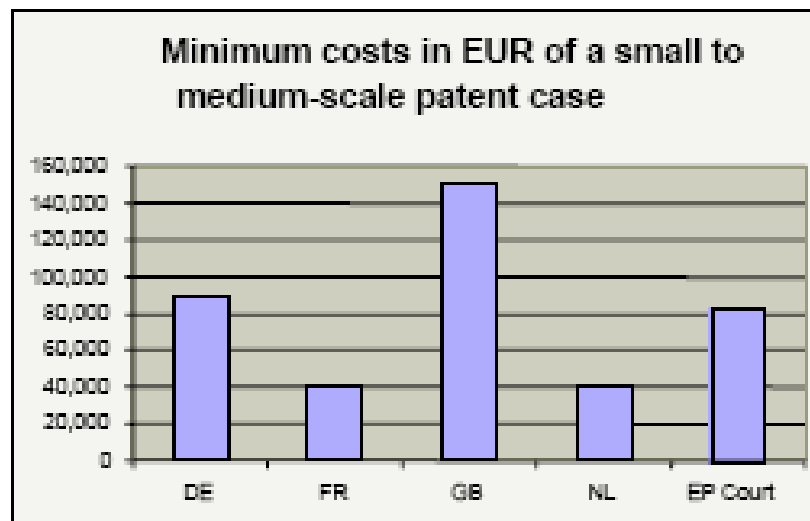
Alternative

THE DRAFT EUROPEAN PATENT LITIGATION AGREEMENT (EPLA)

- At an Intergovernmental Conference in June 1999, the member states of the EPO set up a Working Party on Litigation with the mandate to submit to an optional agreement on an **integrated judicial system** for the **settlement of litigation concerning European patents.**



Proceedings before courts of first instance



Proceedings before courts of second instance

Alternative

- Technical arbitration
- Mediation

Alternative Dispute Resolution

- When to mediate
 - the cost of litigation is expected to be disproportionate to the claim
 - the parties are deadlocked in settlement negotiations
 - complexities of law, fact or relations are likely to protract proceedings and make any judgement or quantum particularly susceptible to appeal
 - there are multi-actions involving common parties
 - the issues are highly complex and involve multi-parties
 - the issues involved are sensitive or require the disclosure of sensitive information
 - the parties do not wish for any publicity

Alternative Dispute Resolution

- When mediation is not appropriate:
 - when a legal, commercial or other precedent needs to be set
 - where summary judgement is available quickly and efficiently
 - parties require emergency injunctive or other protective relief
 - where publicity is actively sought
 - where there is no real interest in settlement

Conclusion

- Strong support on developing an effective patent system in Europe
- A simplified regime must be adopted.
- We opposes any compromise that will make the application for a European patent more expensive than the existing system.
- An efficient system with low costs for legal protection must be made available. Voluntary low cost Alternative Dispute Resolution systems should be encouraged.



<http://www.eurochambres.be>

THANKS!

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